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2016 JAN 14 AM 8:18

In the United States District Court
For the Southern District of New York

Andre Diggs,
Plaintiff

16CV 0312

Summons

v.

Captain Robertson
(under color of state law)

Captain Abdul-Malik
(under color of state law)

Correctional Officer Porter (12976)
(under color of state law)

Correctional Officer Edwards (9934)
(under color of state law)

Correctional Officer Hall
(under color of state law)

(individually and in their official capacities),

Defendants

Civil Action No. _____

To the above mentioned defendants:

You are hereby summoned and required to serve upon plaintiff whose address is Otis Bantum Correctional Center, 1600 Hazen St. East Elmhurst, 11370, an answer to the complaint which is here with served upon you, within 21 days of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the clerk of this court within a reasonable period of time after service.

Clerk of the Court

DATE

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In the United States District Court
For the Southern District of New York

ANDRE DIGGS,
Plaintiff

Complaint

Jury Trial Demanded

v.
Captain Robertson
(under color of state law)
Captain Abdul-Malik
(under color of state law)
Correctional Officer Porter (12976)
(under color of state law)
Correctional Officer Edwards (9934)
(under color of state law)
Correctional Officer Hall
(under color of state law)
(individually and in their official capacities)
Defendants

No. _____

Complaint

Plaintiff Andre Diggs, by his self his complaint against Captain Robertson, Captain Abdul-Malik, Correctional Officer Porter, Correctional Officer Edwards, and Correctional Officer Hall alleges as follows:

Jurisdiction and Venue

1. This action arises under and is brought pursuant to 42 U.S.C. Section 1983 to remedy the deprivation, under color of state law, of rights guaranteed by the Eighth Amendment of the United State Constitution. This court has jurisdiction over this action pursuant to 28 U.S.C. Section 1331 and 1343.

2. Venue properly lies in this District pursuant to 28 U.S.C. Section 1391(b)(2), because the events giving rise to the cause of action occurred at Bronx New York which is located within the Southern District of New York State.

Parties

3. Plaintiff Andre Diggs is and was, at all times relevant hereto, a sentenced inmate in the custody of the City of New York Department of Corrections. At the time of the events relevant hereto, Diggs was incarcerated at Otis Bantum Correctional Center on Rikers Island. Diggs is currently incarcerated at Otis Bantum Correctional Center on Rikers Island.

4. Defendant Captain Robertson was, at all times relevant hereto, a Correctional Officer at Otis Bantum Correctional Center on Rikers Island.

5. Defendant Captain Abdul-Malik was at all times relevant hereto, a Correctional Officer at Otis Bantum Correctional Center on Rikers Island.

6. Defendant Correctional Officer Porter was at all times relevant a correctional officer at Otis Bantum Correctional Center on Rikers Island.

7. Defendant Correctional Officer Edwards was at all times relevant hereto, a Correctional Officer at Otis Bantum Correctional Center on Rikers Island.

8. Defendant Correctional Officer Hall was, at all times relevant hereto, a Correctional Officer at Otis Bantum Correctional Center on Rikers Island.

Previous Lawsuits by Plaintiff

9. Plaintiff has filed no other lawsuits dealing with the same facts involved in this action or otherwise relating to his imprisonment.

Exhaustion of Administrative Remedies

10. On 11/5/2015 I submitted a grievance form explaining how on October 20, 2015 I was transferred to OBCC from EMTC. And upon arrival to OBCC I was given a bed roll which consisted of 2 sheets and a towel. What was missing was a blanket. In which I asked numerous officers and Captains for one because it was very cold at night in this facility and nothing was done. This facility has inadequate heat and the combination of that and the jail not giving me a blanket deprives me of warmth which is cruel and unusual punishment. This grievance was never

answered thus denying me my due process because I can't appeal any decision that was never made.

Statement of Claim

11. At all relevant times herein, defendants were "persons" for the purpose of 42 U.S.C. Section 1983 and acted under color of state law to deprive plaintiff of his constitutional rights, as set forth more fully below.

Statement of Facts

12. On 10/20/2015 I was transferred to OBCC from EMTC at which time I was given a bed roll. I asked for a blanket and the officer told me that I was going to receive one in two hours but that never happened.

13. On 10/21/2015 the clothes box officer who was Correctional Officer Porter (12976) came to my dorm & Lower to come and get his workers at which time I asked him for a blanket and he told me that he didn't have any. At which time I told him that it was freezing and that cold triggers my asthma and he told me that was not his problem.

14. On 10/21/2015 Captain Robertson came to my dorm 5 Lower to make her rounds and I asked her about my blanket situation and she told me that she would look into it and never returned.

15. On 10/21/2015 I asked my Officer Edwards (9934) about getting me a blanket and she told me that I was probably going to have to wait until somebody went home whenever that was going to be.

16. On 10/21/2015 at around last meal time I asked officer Hall about me getting a blanket and he said that he would make a call and see what he could do and I heard nothing else about it.

17. On 10/21/2015 Captain Abdul-Malik came to my dorm 5 Lower to make her rounds and I asked her about the new inmates getting blankets that we were required and she told me there was nothing that she could do.

Prayer for Relief

18. Plaintiff request an order declaring that the defendants have acted in

violation of the United States Constitution.

19. Plaintiff request an injunction compelling defendants to stop depriving me access to a blanket and warmth.

20. Plaintiff request \$1,000,000 as compensatory damages.

Signed the 10 day of November, 2015

Andre figgs

I declare under penalty of perjury

Andre figgs

November 10, 2015

DATE

AFFIDAVIT

In the United States District Court
For the Southern District of New York

Andre Diggs,
Plaintiff

v.

Captain Robertson

(under color of state law)

Captain Abdul-Malik

(under color of state law)

Correctional Officer Porter (12976)

(under color of state law)

Correctional Officer Edwards (9934)

(under color of state law)

Correctional Officer Hall (9926)

(under color of state law)

(individually and in their official capacities)

AFFIDAVIT of Andre Diggs

I, Andre Diggs, being duly sworn according
to the law deposes and says that I am the
plaintiff in the above entitled proceeding.

Andre Diggs
Plaintiff

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Andre Dibbs

DEFENDANTS

Captain Robertson, Captain Abdul-Malik, C.O. Porter, C.O. Edwards, C.O. Hill

County of Residence of First Listed Defendant

Bronx

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Andre Dibbs
BC#541-15-01712, (ORCC) OTS Bantam Court
Center 1600 Hazen St. East Elmhurst 11370

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☒ 1 U.S. Government Plaintiff☐ 3 Federal Question (U.S. Government Not a Party)☒ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

☒ PTF 1 ☒ DEF 1

Incorporated or Principal Place of Business in This State

☐ PTF 4 ☐ DEF 4

Citizen of Another State

☐ 2 ☐ 2

Incorporated and Principal Place of Business in Another State

☐ 5 ☐ 5

Citizen or Subject of a Foreign Country

☐ 3 ☐ 3

Foreign Nation

☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	PROPERTY RIGHTS	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input checked="" type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from another district (specify)☐ 6 Multidistrict Litigation☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Section 1983

Brief description of cause: No blanket was given to me. I was deprived of warmth/cruel and unusual punishment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

1,000,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

November 10, 2015

SIGNATURE OF ATTORNEY OF RECORD

Andre Dibbs

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Exhibit

A

Attachment B

Form: # 7101R, Eff.: 09/10/12, Ref.: Dir. #3376 - page 1



City of New York - Department of Correction

INMATE GRIEVANCE AND REQUEST PROGRAM STATEMENT FORM

Inmate's Name: <i>Andre Diggs</i>	Book & Case #: <i>541-15-01712</i>	NYSID # (optional): [REDACTED]	
Facility: <i>OBCC</i>	Housing Area: <i>5 Lower</i>	Date of Incident: <i>10/20/2015</i>	Date Submitted: <i>11/5/2015</i>

All grievances and requests must be submitted within ten business days after the incident occurred, unless the condition or issue is on-going. The inmate filling the grievance or request must personally prepare this statement. Upon collection by Inmate Grievance and Request Program (IGRP) staff, IGRP staff will time-stamp and issue it a grievance/request reference number, IGRP staff shall provide the inmate with a copy of this form as a record of receipt within two business days of receiving it.

Request or Grievance:

On October 20, 2015 I was transferred to OBCC from EMTC. Upon my arrival to this facility I was given a bed roll which consisted of 2 sheets and a towel. What was missing was a blanket. In which I asked numerous officers and Captains in which I never received to date. This facility has inadequate heat and the combination of both deprives me of warmth which is cruel and unusual punishment.

Action Requested by Inmate

I would like to receive a blanket and or have the heat turned on in my cell block dorm 5 Lower in (OBCC) Otis Bantam Correctional facility.

Please read below and check the correct box:

Do you agree to have your statement edited for clarification by IGRP staff?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Do you need the IGRP staff to write the grievance or request for you?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Have you filed this grievance or request with a court or other agency?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Did you require the assistance of an interpreter?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Inmate's Signature:

Date of Signature:

11/5/2015
For DOC Office Use Only

**IGRP RETAINS THE DOUBLE-SIDED ORIGINAL FOR ADMINISTRATIVE RECORDS.
IGRP MUST PROVIDE A COPY OF THIS FORM TO THE INMATE AS A RECORD OF RECEIPT.**

Time Stamp Below:	Grievance and Request Reference #:	Category:
	Inmate Grievance and Request Program Staff's Signature:	

CC: File

Diabbs BC#541-15-01712
Brooklyn Detention Complex
75 Atlantic Avenue, Brooklyn
New York 11201

USMP3
SDNY



RETURN RECEIPT REQUESTED

USMP3
SDNY



PRO SE

1-12-16

United States District
Court, Southern Dist
Of New York, U.S. Cour
500 Pearl St, New York
10007-1312



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